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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/525,976      | 07/29/2005  | Rowan Dallimore      | 034369-003          | 5016             |

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DRINKER BIDDLE & REATH (DC)  
1500 K STREET, N.W.  
SUITE 1100  
WASHINGTON, DC 20005-1209

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| EXAMINER |
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FRANCIS, FAYE

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| ART UNIT | PAPER NUMBER |
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3725

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| MAIL DATE | DELIVERY MODE |
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04/13/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                               |                                  |  |
|------------------------------|-------------------------------|----------------------------------|--|
| <b>Office Action Summary</b> | Application No.<br>10/525,976 | Applicant(s)<br>DALLIMORE ET AL. |  |
|                              | Examiner<br>Faye Francis      | Art Unit<br>3725                 |  |

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 March 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 2-8 and 10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,9 and 11-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |  |
|---|--|
| <p>1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)</p> <p>2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)</p> <p>3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br/>Paper No(s)/Mail Date <u>2/28/05, 3/2/07, 7/29/05</u>.</p> | <p>4) <input type="checkbox"/> Interview Summary (PTO-413)<br/>Paper No(s)/Mail Date. _____.</p> <p>5) <input type="checkbox"/> Notice of Informal Patent Application</p> <p>6) <input type="checkbox"/> Other: _____.</p> |
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**DETAILED ACTION**

***Election/Restrictions***

1. Applicant's election with traverse of group IV in the reply filed on 3/2/07 is acknowledged. The traversal is on the ground(s) that the search and examination of the entire application could be performed without serious burden. This is not found persuasive because election of species is not determinate upon a burden on the applicant but upon a burden on the Patent and Trademark Office. Since the examiner has determined that such a burden exists, the requirement is still deemed proper and is therefore made FINAL. Since all the pending claims read on the elected species (as the applicant appears to also agree with) all the pending claims are examined herein.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1, 9 and 11-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are indefinite because they are drafted in such a way that it is not clear whether they are drawn to the subcombination of a holding member or to the combination of a holding member and an impact crusher comprising a vertical wall segment including a hole therein. For example **only**, and with reference to claim 1, lines 1 and 2 thereof recite "A holding member for holding a horizontal wear plate in position on a rotor for a vertical shaft impact crusher ...", indicating that what is claimed

is the subcombination of a holding member. Note also the phrase "the holding member comprising" on line 2. On the other hand, portions of the claim recite limitations on the vertical wall segment of the impact crusher or limitations that are dependent on the vertical wall segment [note the limitations in lines 2 and 3 of the claim that the fixing the holding member to a vertical wall segment or in claim 17 which depend on claim 1 note the limitation "an interference fit between the wedge and one or more of a surface of the hole of the vertical wall segment, a surface of the wear plate and a support fixed to a lower disc adjacent to an outer wall face of the vertical Wall segment". These elements indicate that perhaps the applicant's intention is to claim the holding member in combination with the impact crusher. All of the independent claims rejected under the aforementioned grounds contain the same defects.

In this office action it is presumed that the claims are drawn to the subcombination of the holding member only, in order to give the claims their broadest reasonable interpretation during examination, per applicable rules. Accordingly, all references in the claims to "non holding member" such as the vertical wall segment of the impact crusher are only to be statements of intended use with regard to the claimed holding member. Said differently, all such features are not considered to further structurally limit the claimed holding member.

However clarification of the scope of the claims is required in response to this office action. Should applicant desire to claim the holding member and the impact crusher in any claim, and then the same should be clearly done. The applicant is

reminded that it is by now well settled that features not claimed may not be relied upon in support of patentability.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1, 9 and 11-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Garrison [6,074,210].

Garrison discloses a holding member [wedge 10] made of polymer plastic which inherently is capable of being installed into a hole in a wall.

6. Claims 1, 9 and 11-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Terrenzlo [4,796,822].

Terrenzlo discloses a holding member [retaining means/bar 172], which inherently is capable of being installed into a hole in a wall.

7. Claims 1, 9 and 11-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Mayer et al. [4,997,368].

Mayer et al. discloses a holding member [wedge 10] made of polymer plastic which inherently is capable of being installed into a hole in a wall.

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8. Claims 1, 9 and 11-17 are rejected under 35 U.S.C. 102(e) as being anticipated by Greer, Jr. [US/2003/0232661].


Greer, Jr. discloses a holding member [wedge/hitting plate 16] made of polymer plastic which inherently is capable of being installed into a hole in a wall.

**Conclusion**

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Faye Francis whose telephone number is 571-272-4423. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Banks Derris can be reached on 571-272-4419. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Faye Francis  
Primary Examiner  
Art Unit 3725

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